

ANNEX

At the **30th International Red Cross and Red Crescent Conference** in November 2007, the Austrian government made the following **pledges**, partly in cooperation with the Austrian Red Cross:

- Organisation of seminars on IHL for university students, journalists and other opinion leaders; a seminar is currently in planning and will take place in September 2008 (Austrian Government and Austrian Red Cross);
- Adoption of a national law providing for a ban on cluster munitions and the destruction of existing Austrian stockpiles within three years and active commitment towards an international legally binding instrument banning cluster munitions. The national law has already been adopted and entered into force in January 2008 (Austrian Government);
- Engaging regarding the signing and ratification of the Ottawa Convention on the prohibition of Antipersonnel Mines by states which have not yet done so and upholding Austria's support for projects against anti-personnel mines as a political priority (Austrian Government);
- Measures to strengthen the intercultural competence of pedagogical staff and development of teaching and learning materials with a view to enhancing education of students with a migrant background (Austrian Government and Austrian Red Cross);
- Integration of the teaching aid "Exploring Humanitarian Law" into citizenship and human rights education in schools as well as into basic and advanced teacher training (Austrian Government and Austrian Red Cross);
- Organisation of a follow-up conference to the "European Leadership Conference on Exploring Humanitarian Law" in Vienna in 2006 with a view to supporting the coordination of the IHL implementation process in Europe; the conference will take place in Ljubljana June 2008 and is organised in cooperation with Slovenia (Austrian Government and Austrian Red Cross);

In addition, the Austrian Red Cross made the following pledges:

- Promotion of voluntary work of young Muslim migrants in the Austrian Red Cross in order to foster their integration into Austrian society;
- Measures with a view to attaining the necessary number of adequate accommodation facilities for refugees in Austria.

In February 2008, the new **Federal Law on the Recognition of the Austrian Red Cross and the Protection of the Emblem of the Red Cross** entered into force. This law contains an array of clauses which, in comparison to the former law dating from 1962, strengthen the recognition of the Austrian Red Cross Society, define its role more clearly and facilitate its work. The draft is to a large extent inspired by the model law, while also taking into account Austrian specificities. *Inter alia*, the new law provides for the recognition and definition of the auxiliary role of the National Society and the rights deriving from it (such as the right to receive and process data in the context of searching for missing persons); the enhanced protection of the emblems (Red Cross/Crescent/Crystal); the recognition of the right of Red Cross workers to keep secrecy about information gained in fulfilment of their task; the recognition of the role of the Austrian Youth Red Cross, in particular as regards the dissemination of the Red Cross principles and IHL.

The English translation of the Federal Law on the Recognition of the Austrian Red Cross and the Protection of the Emblem of the Red Cross is attached to this information.

FEDERAL LAW GAZETTE

FOR THE REPUBLIC OF AUSTRIA

Year 2008

Published on January 11,
2008

Part I

33. Federal law: Red Cross Law (RKG)
(NR: GP XXIII RV 233 AB 351 P. 42, BR: AB 7874 P. 751)

33. Federal law on the Recognition of the Austrian Red Cross and the Protection of the Red Cross Emblem (Red Cross Law – RKG)

The National Assembly has decided:

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The Austrian Red Cross

§ 1. (1) The Austrian Red Cross is the recognised national society of the Red Cross in the territory of the Republic of Austria. The establishment of other national societies of the Red Cross and Red Crescent Movement in Austria is impermissible. The Austrian Red Cross can empower its branch associations, their branch associations as well as societies in which it or these branch associations are involved to utilise the name of the Red Cross.

(2) As a component of the International Red Cross and Red Crescent Movement, the Austrian Red Cross is linked to their principles; this also applies to the institutions authorised by it commensurate with Para. 1.

Tasks

§ 2. (1) The Austrian Red Cross carries out those tasks which ensue from the Geneva Conventions on the Protection of Victims of International Armed Conflicts from 12 August 1949, *BGBI.* [Federal Law Gazette] No. 155/1953, the two Additional Protocols to the Geneva Conventions from 1977, *BGBI.* No. 527/1982 (subsequently, "Geneva Conventions and Additional Protocols"), the relevant resolutions of the International Red Cross and Red Crescent conferences and the provisions of its statutes concerning this.

(2) As a voluntary relief society, the Austrian Red Cross supports the Austrian authorities in the humanitarian field. The conditions for this support and the delegation of tasks to the Austrian Red Cross, including the regulation of cost payment, will be stipulated in the agreements between the responsible Austrian authorities and the Austrian Red Cross.

(3) The Austrian authorities support the Austrian Red Cross within the scope of their organisational and financial possibilities in the fulfilment of the tasks mention in Para. 1.

(4) In the realisation of the service for tracing missing persons, the transmission of Red Cross family news and of family reunifications commensurate with the Geneva Conventions and Additional Protocols, the Austrian Red Cross is authorised to obtain the necessary information and to process and transmit the data required for this purpose.

Dissemination of the ideology of the Red Cross, Youth Red Cross

§ 3. The Austrian Red Cross also has the task to disseminate the ideology of the Red Cross as well as the spirit and content of the Geneva Conventions and Additional Protocols. For the realm of schooling and out-of-school educational institutions, this task is realised within the scope of the Austrian Red Cross by the Austrian Youth Red Cross, which in cooperation with teachers, parents, children and young persons particularly endeavours to lead young people to a more humanitarian way of thinking and to human behaviour.

Confidentiality

§ 4. Full-time and voluntary employees of the Austrian Red Cross and the institutions authorised by it commensurate with § 1 Para. 1 are obligated to confidentiality concerning all facts becoming known to them exclusively in the fulfilment of the international tasks of the Red Cross and Red Crescent Movement, the disclosure of which could directly or indirectly hinder or restrict the realisation of these tasks, or which they have been informed or made aware of on account of a special confidential relationship. At the request of a court of an administrative authority, the Austrian Red Cross can release these employees from this confidentiality obligation if this is in the interest of the administration of justice or is otherwise predominant public interest.

Emblem

§ 5. (1) The emblem of the Austrian Red Cross is the Red Cross on a white background. The Austrian Red Cross authorised to utilise this emblem for all its tasks and to authorise other persons and institutions in connection with these tasks.

(2) The Austrian Red Cross is entitled to bear a coat of arms and a seal, in which the Austrian federal eagle as well as the inscription "Austrian Red Cross" appear beside the emblem of the Austrian Red Cross commensurate with Para. 1.

Special provisions for armed conflicts

§ 6. (1) In times of armed conflicts in which the Republic of Austria is involved, the Austrian Red Cross supports the Austrian armed forces medical corps within the scope of its possibilities in accordance with the provisions of the Geneva Conventions and Additional Protocols. The utilisation of the distinctive emblem as defined by the Geneva Conventions and Additional Protocols is only permissible with the approval of the military authority; the Austrian Red Cross is entitled to make its support of Austrian armed forces medical corps dependent on the permission to utilise the distinctive emblem.

(2) As defined by the Geneva Conventions, the military authority is the Federal Minister of Defence as well as the agencies subordinate to him.

Jurisdiction

§ 7. (1) The regional administrative authorities are the responsible authorities for implementation of the provisions of Art. 18 Para. 2 to 4, 20, Para. 2 and 3, 21 and 22 Para. 2 of the Geneva Conventions on the Protection of Civilian Persons in Times of War from 12 August 1949 as well as Art. 18 and Art. 23 Para. 1 of the Additional Protocol to the Geneva Conventions from 12 August 1949 concerning the Protection of Victims of International Armed Conflicts (Protocol I).

(2) During the implementation of the provisions of Art. 18 Para. 4 of the Geneva Conventions concerning the Protection of Civilian Persons in Times of War, the agreement of the regional administrative authorities with the military authority is to be reached.

Improper utilisation of emblem

§ 8. (1) It is forbidden to utilise

- a) the emblem of the Red Cross on a white background or the words "Red Cross" or "Geneva Cross" in all languages,
- b) the emblem of the Red Crescent on a white background, the emblem of the Red Lion with a red sun on a white background, the words "Red Crescent" or "Red Lion with Red Sun" in all languages,
- c) the emblem of the Additional Protocol to the Geneva Conventions from 12 August 1949 concerning the adoption of an additional distinctive emblem (Protocol III), "Red Crystal on a white background" or the words "Red Crystal" in all languages,

- d) emblems and designations which represent an imitation of the emblems and designations according to lit. a) to c), which could engender cases of mistaken identity or errors, or unjustifiably allude to a connection with the Austrian Red Cross, or
- e) other internationally recognised symbols, badges or signals conferring protection commensurate with Art. 38 of Protocol I, insofar as no other special legal provisions have been granted to their protection

contrary to the provisions of the Geneva Conventions and Additional Protocols or as an emblem without authorisation of the Austrian Red Cross commensurate with § 5 Abs. 1.

(2) Furthermore, it is forbidden to utilise the coat of arms of the Swiss Confederation – a white cross on a red background – as well as emblems which represent an imitation of this coat of arms

- a) as a brand or as a component of brands,
- b) for a purpose contrary to public policy, or
- c) under conditions which are suited to violate the Swiss national consciousness.

(3) The words and emblems specified under Para. 1 lit. a to d may only be registered as a brand with the approval of the Austrian Red Cross. This also applies to emblems which merely include these words and emblems as components. After the entry into force of this federal law, brands registered contrary to this provision are to be cancelled via appropriately justified request. Words and emblems registered as brands before entry into force of this federal law commensurate with Para. 1 lit. a, b and d, the latter insofar as it concerns imitations of the emblem commensurate with lit. a and b, are to be cancelled via appropriately justified request if they have been registered contrary to the utilisation prohibition of Para. 1; however, in the event of words in other languages than German only if they have not already been utilised in a lawful manner before the entry into force of this federal law.

The realisation of the cancellation is retroactive to the commencement of the period of protection.

(4) The emblem specified under Para. 1 lit. c, or an emblem that represents an imitation thereof, may be utilised if this utilisation in times of an armed conflict does not give the impression as if the protection of the Geneva Conventions and Additional Protocols is guaranteed as a result, and insofar as the rights for utilisation of this emblem have been acquired before 8 December 2005.

Administrative penalties

§ 9. (1) Whoever contravenes the provisions of § 8 Para. 1 and 2 commits, insofar as a judicially punishable element of a case is not at hand, an administrative violation, and is to be punished with a fine of 360.-- Euro to 3,600.-- Euro.

(2) Whoever commits the offence commensurate with Para. 1 in a form through which the utilisation of improperly designated objects becomes known to a broad public is to be punished with a fine of 800.-- Euro to 15,000.-- Euro.

(3) If an administrative violation is committed according to § 8 Para. 1, the regional administrative authorities have to order the removal of the unlawful designation at the owner's expense. Objects designated as unlawful can be declared invalid.

(4) At the request of the Austrian Red Cross, the publication of portions of the decision in the administrative penalty is to be adjudicated at the expense of the convicted party if the communication regarding notification of the public concerning the administrative violation and its prosecution is required. The portions to be published are to be specified in the decision. The provisions of the Austrian Media Act, BGBl. No. 314/1981 as amended in the federal law BGBl. I No. 151/2005 concerning the publication of the decision are to be applied.

(5) The Austrian Red Cross is entitled to be a party to the proceedings throughout the entire administrative procedure commensurate with § 8 General Administrative Procedure Act (AVG), BGBl. No. 51/1991 in the currently prevailing version.

(6) However, if the infringement of the provisions of § 8 Para. 1 and 2 is committed through a person who is subject to Austrian military disciplinary law, Para. 1 is not applied; but irrespective of penal law responsibility, a disciplinary procedure is to be conducted against such a person commensurate with the provisions of the Federal Armed Forces Disciplinary Act (HDG) 2002, BGBl. I No. 167 in the version of the federal law BGBl. I No. 116/2006.

Exemption from fees

§ 10. Obtaining registration information through the tracing service of the Austrian Red Cross and the disclosure and utilisation of an enquiry authorisation from the Central Register of Residents commensurate with § 16a Para. 5 Austrian Registration Act (MeldeG) 1991, BGBl. No. 9/1992 in the

currently prevailing version for this purpose as well as the transmission of family news are exempt from all fees and federal administrative charges.

Entry into force

§ 11. (1) This federal law enters into force effective

(2) The federal law from 27 June 1962 on the Protection of the Emblem and the Name of the Red Cross (Red Cross Protection Law), BGBl. No. 196/1962, becomes inoperative with the entry into force of this federal law.

Enforcement

§ 12. (1) Insofar as this does not concern matters which are issues of Austrian provincial enforcement, the following agencies and officials are entrusted with the enforcement of this federal law

- a) in terms of § 3, the Austrian Federal Minister for Education, the Arts and Culture;
- b) in terms of § 4, the Austrian Federal Minister of Justice;
- c) in terms of §§ 6, 7 and 9 Para. 6, the Austrian Federal Minister of Defence;
- d) in terms of § 8 Para. 3, the Austrian Federal Minister of Transport, Innovation and Technology;
- e) in terms of § 10 relating to the fees and federal administrative charges, the Austrian Federal Minister of Finance; in relation to the administrative charges upon utilisation of the Central Register of Residents, the Austrian Federal Minister of the Interior;
- f) in other respects, the federal government.

(2) Insofar as matters which are issues of Austrian provincial enforcement will be governed through this federal law, their enforcement is always incumbent upon the locally responsible provincial government.

Fischer

Gusenbauer

Preliminary Page

Problem:

Since the entry into force of the federal law from 27 June 1962 on the Protection of the Emblem and the Name of the Red Cross (Red Cross Protection Law), *BGBI.* [Federal Law Gazette] No. 196/1962, humanitarian international law has further developed, particularly through the adoption of the two Protocols I and II to the Geneva Conventions in 1977, *BGBI.* No. 527/1982, as well as Protocol III in 2005. Furthermore, the interstate resolutions of the Red Cross and Red Crescent conferences born by Austria are to be taken into consideration.

Goal:

Creation of international legal obligations and Austria's foreign-policy commitments corresponding to the Austrian Red Cross as well as adequate protection of the emblems protected according to the Geneva Conventions and Additional Protocols.

Contents:

Recognition of the Austrian Red Cross as a national Red Cross society, stipulation of its tasks and the conditions for the cooperation between the Austrian authorities and the Austrian Red Cross, and protection of the emblems protected according to the Geneva Conventions and Additional Protocols.

Alternatives:

None

Effects on employment and the economic location Austria:

None

Financial effects:

No additional costs result through the law, at most fee revenues are cancelled on account of the exemptions in § 10.

Relationship with the legal provisions of the European Union:

There are no binding legal provisions of the European Union in this realm. The law does not contradict guidelines of the European Union regarding promotion of compliance with the standards of humanitarian international law (*ABl.* [Official Journal] No. C 327 from 23.12. 2005, p. 04).

Special features of the creation of standards process:

None

Explanations

I. General Part

The four Geneva Conventions on the Protection of Victims of International Armed Conflicts from 12 August 1949 (in the following: Geneva Conventions) were ratified according to constitutional approval through the National Assembly by the Federal President and, since the ratification document was deposited with the Swiss Executive Federal Council on 27 August 1953, entered into force vis-à-vis Austria on 27 February 1954. The Geneva Conventions are:

I. The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field from 12 August 1949

II. The Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea from 12 August 1949

III. The Convention on the Treatment of Prisoners of War from 12 August, and

IV. The Convention on the Protection of Civilian Persons in Times of War from 12 August 1949

The Geneva Conventions were announced in BGBl. No. 155/1953.

Protocols I and II to the Geneva Conventions from 1977 were ratified according to constitutional approval through the National Assembly by the Federal President and, since the ratification document was deposited with the Swiss Executive Federal Council on 27 August 1983, entered into force vis-à-vis Austria on 13 February 1983. Protocols I and II are:

I. The Additional Protocol to the Geneva Conventions from 12 August 1949 on the Protection of Victims of International Armed Conflicts (Protocol I), and

II. The Additional Protocol to the Geneva Conventions from 12 August 1949 on the Protection of Victims of Non-International Armed Conflicts (Protocol II)

These Protocols were announced in BGBl. Nor. 527/1982.

The Additional Protocol to the Geneva Conventions from 12 August 1949 on the Adoption of an Additional Distinctive Emblem (Protocol III) was adopted on 8 December 2005 by the Diplomatic Conference of the Contracting Parties of the Geneva Conventions in Geneva and entered into force on 14 January 2007. Protocol III was signed by the Republic of Austria, but not yet ratified to date.

The protection of the name and the emblem of the Red Cross were previously governed in Austria in the federal law from 27 June 1962 on the Protection of the Emblem and the Name of the Red Cross (Red Cross Protection Law), BGBl. No. 196/1962. In particular, this law took into consideration the requirements of Art. 23 to 26, 38 to 44, 53 and 54 of the 1st Geneva Convention, Art. 41 to 45 of the 2nd Geneva Convention as well as Art. 18, 20, 21 and 22 of the 4th Geneva Convention.

Since the entry into force of the Red Cross Protection Law in 1962, humanitarian international law has continuously further developed. The adoptions of the two Protocols I and II to the Geneva Conventions in 1977 as well as Protocol III in 2005 have particularly expedited this development.

An additional distinctive emblem, the "Red Crystal" was introduced with Protocol III, which can be utilised under certain circumstances as a distinctive emblem by national Red Cross societies, the International Federation of the Red Cross and Red Crescent Societies as well as by the International Committee of the Red Cross or can be chosen as an emblem by national societies.

As a result, the "Red Crystal" enjoys the same protection as the emblems of the Red Cross and Red Crescent. The Republic of Austria intends to ratify Protocol III. The interstate basis for the protection of the new emblem will be created and thus the implementation of Protocol III will be ensured with the law at hand.

New developments for the contracting states of the Geneva Conventions have ensued from resolutions adopted since 1962 by the International Conferences of Red Cross and Red Crescent (in the following: Red Cross Conferences). Even in the Red Cross Protection Law of 1962 it was stipulated that the tasks of the Austrian Red Cross ensue from the Geneva Conventions of 1949 and the resolutions of the International Red Cross Conferences. The participants in the International Red Cross Conferences are the contracting states of the Geneva Conventions (thus also the Republic of Austria), the national Red Cross and Red Crescent societies as well as the International Committee of the Red Cross (ICRC) and the International Federation of the Red Cross and Red Crescent Societies; every participant has a voice. As a result, the resolutions of the International Red Cross Conferences will be borne by the contracting states of the Geneva Conventions, who are parties of the International Red Cross Conferences. Therefore the resolutions are formidable for the legislators as well as for the enforcement.

On account of these developments, a Model Red Cross Law that meets many of the new requirements was drafted on the international level by the Federation of Red Cross and Red Crescent Societies. This Model Red

Cross Law was already presented in November 1999 at the International Red Cross Conference in Geneva ("Model Red Cross Law 1999"). In the official report on the results of the conference it also said:

"National societies have a unique mandate, which is stipulated through the states in the Geneva Conventions, in the statutes of the movement and in other resolutions of the International Conference. National societies perform public functions in the humanitarian field for the benefit of the officials in their countries. It is in the general interest of the states to effectively protect and ensure these functions so that the national societies of the states are further able to perform these functions under the conditions which the states create, and which are stipulated in international agreements and resolutions of the Red Cross Conference, including the Red Cross principles.

In order to support the national societies in remaining loyal to the Red Cross principles, an acknowledgement of the governments in statutory form is necessary. This has to ensure that there is only one Red Cross and Red Crescent Society per country, which is open to everyone, that this society is not subject to any fiscal obstacles upon receipt of donations, that its name and its emblem will not be misused, that leading religious, financial or political forces do not influence the society to the effect that other interests than those of the most vulnerable are represented, and so on." (Translated from an Austrian Red Cross translation)

In addition to the stated developments on the legal level, particularly numerous abusive utilisations of the Red Cross emblem in practice have shown that adequate protection can no longer be evidently ensured through the available legal provisions.

For this reason, the representatives of the Austrian federal government promised the following in a formal obligation ("pledge") at the 27th International Red Cross Conference in 1999:

"... To undertake a review of the legislation currently in force regulating the status of the Austrian Red Cross and the protection of the Red Cross emblem (Red Cross Protection Law), with a view to adapt the law to current needs. This shall be done in close cooperation with the Austrian Red Cross. In this connection, the Draft Model Red Cross/ Red Crescent Law will be duly taken into consideration."

Furthermore, in 2006 an updated Model Red Cross Law (Model Red Cross Law 2006) was presented by the "Advisory Service of International Humanitarian Law" of the ICRC, in which the emblem of the "Red Crystal" will now also be taken into consideration.

Various provisions concerning the Austrian Red Cross, which particularly for historical reasons do not have any corresponding formal statutory basis, will also be codified with the law at hand, such as the authorisation to bear the federal coat of arms with the Red Cross on the breastplate (which had been conferred through imperial decree and since then merely officially confirmed) or the traditional and meanwhile implementation of Red Cross service for tracing missing persons ratified in the *Postgesetz* [Postal Services Act], BGBl. I No. 18/1998 in the currently prevailing version.

Therefore the following requirements are to be stated by way of summary, which shall be taken into consideration with the creation of a new Red Cross Law:

1. Implementation of the international Model Red Cross Law 2006 co-resolved by the Republic of Austria
2. Consideration of the relevant international legal instruments (Protocols to the Geneva Conventions of 1949) created since 1962, and in particular consideration and interstate implementation of Protocol III; as a result, Austria can show a positive model effect in the international humanitarian field
3. Reaction to the high number of misuses of the Red Cross emblem in the past through creation of an adequate, statutory protection in keeping with the times
4. Creation of a timely, correct and internationally exemplary statutory basis for the activities of the Austrian Red Cross
5. Adoption and safeguarding of the special tasks of the Austrian Youth Red Cross
6. Creation of a statutory basis for the service for tracing persons missing due to war in harmony with the requirements of the present-day situation with regard to data protection laws
7. Clearer presentation of the tasks and activities of the Austrian Red Cross and their implementation, as well as the explicit obligation for compliance with the Red Cross principles through the Austrian Red Cross

The jurisdiction of the Federal Government for regulation of this subject matter is based on Art. 10 Para. 1 Z 12, Art. 10 Para. 1 Z 15, Art. 10 Para. 1 Z 8 and Art. 16 Para. 4 B-VG [Austrian Federal Constitutional Law]. Pursuant to Art. 16 Para. 4 B-VG, the provinces are obligated to take measures which will be necessary for implementation of international treaties in their autonomous sphere of activity; if a province does not fulfil this obligation in good time, the jurisdiction for such measures devolves upon the Federal Government, in particular also for enactment of the necessary laws. Even in the explanatory remarks regarding the Red Cross Protection Law of 1962 it was deemed that a sufficient period had already passed (eight years) since the ratification of the Geneva Conventions without the provinces having enacted corresponding laws, and therefore the federal jurisdiction was justified. Today this has to apply – and meanwhile also for the two Protocols of 1977 – even more so.

The Federal Government has not accrued any direct costs through this federal law, but discontinuance of fee revenues can come about on account of § 10.

II. Special Part

To § 1 Para. 1:

In Clause 1, the Austrian Red Cross, as already in the Red Cross Protection Law of 1962, is expressly recognised as a national society as defined by Art. 26 of the 1st Geneva Convention. This recognition is one of the prerequisites for the applicability of the Geneva Conventions and Additional Protocols to the Austrian Red Cross. Pursuant to Art. 26 of the 1st Geneva Convention, the personnel is namely those national societies of the Red Cross and other voluntary aid societies duly recognised and approved by their government that will be utilised for the same tasks as the personnel mentioned in Art. 24 (military medical personnel) and on an equal footing with the personnel in Art. 24, under the prerequisite that the personnel of these societies is under the authority of military laws and regulations.

The Red Cross principle of unity – one of the binding Red Cross principles commensurate with § 1 Para. 2 – necessitates the exclusivity clause formulated in Clause 2, which specifies that there can be no other Red Cross and Red Crescent societies in Austria in addition to the Austrian Red Cross. This determination is replicated in the Model Red Cross Law.

Attempts by various private individuals in the 1990's to call into being a "Kurdish Red Crescent" association in Austria – in Germany this actually succeeded on account of the insufficient legal situation – shows that clear provisions are necessary in this connection.

In Clause 3 it is stated that the Austrian Red Cross can empower its branch associations, their branch associations as well as societies in which it or these branch associations are involved to utilise the name of the Red Cross. This takes into consideration the structure of the Austrian Red Cross with its provincial associations, regional offices and affiliates which partially have their own legal personality. The expression of branch association is taken from § 1 Para. 4 Associations Act [VerG] 2002, BGBl. I No. 66/2002 in the prevailing version. The bodies of the Austrian Red Cross which make this authorisation ensue from its statutes.

To § 1 Para. 2:

Here it is stated that the Austrian Red Cross, as a component of the International Red Cross and Red Crescent Movement as well as the institutions commensurate with § 1 Para. 1, which as sub-classifications or parts of the Austrian Red Cross are allowed to utilise the name of the Red Cross, are bound to the seven Red Cross principles. These were resolved by the 20th International Red Cross Conference in Vienna in 1965, and are thus also binding for the contracting states of the Geneva Conventions.

The Red Cross principles are Humanity, Impartiality, Neutrality, Independence, Voluntary Service and Universality, and are explained as follows:

"HUMANITY. Man is always and everywhere a fellow human being.

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. It endeavours to protect life and health, and to ensure respect for human life. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.

IMPARTIALITY. Help does not discriminate in an emergency.

The Red Cross and Red Crescent Movement do not discriminate according to nationality, race, religion, social status or political conviction. They solely endeavour to help people according to the extent of their need, and thus to give priority to the most urgent cases.

NEUTRALITY. Humanitarian initiative requires the trust of everyone.

In order to sustain the trust of all, the Red Cross and Red Crescent Movement refrains from participation in hostilities as well as any time in political, racial, religious or ideological disputes.

INDEPENDENCE. Self-determination preserves our principles.

The Red Cross and Red Crescent Movement are independent. Even if the national societies support the authorities in their humanitarian activity as aid societies and are subject to respective national laws, they must nevertheless preserve an independence which allows them to at all times to act in accordance with the principles of the Red Cross and Red Crescent Movement.

VOLUNTARY SERVICE. *Genuine help requires no self-interest.*

The Red Cross and Red Crescent Movement embody voluntary and altruistic help without any desire for gain.

UNITY. *In every country united and open for all.*

There can only be one single national Red Cross or Red Crescent society in any country. It must be open to all and carry out their humanitarian activity in the entire territory.

UNIVERSALITY. *The humanitarian obligation worldwide.*

The Red Cross and Red Crescent Movement, in which all national societies have the same rights and the obligation to help each other, are worldwide."

These principles were proclaimed by the 20th International Red Cross Conference in 1965 in Vienna. The adapted text at hand is contained in the statutes of the International Red Cross and Red Crescent Movement, which were adopted by the 25th International Red Cross Conference in 1968 in Geneva.

The subtitles represent an interpretation of the principles. They were resolved on 6 December 1994 in the 147th session of the Working Committee of the Austrian Red Cross.

For instance, the obligation of the states to respect the commitment of the Red Cross to its seven principles means that the Red Cross Society may not be forced to infringe upon these principles through any official acts. For instance, the attempt to exert an influence on the bodies of the Red Cross and their statutory decision-making would be an infringement of the principle of independence.

The following is also stated in Resolution 55 (I) of the General Assembly of the United Nations from 19 November 1946:

"RESOLUTION 55 (I) OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS WITH REGARD TO THE RED CROSS

The General Assembly draws the attention of the members of the United Nations to the fact that in particular the following objectives are of special importance:

...that the addressed members support and promote the commitment and cooperation of duly authorised, voluntary national Red Cross and Red Crescent societies;

...that at all times the independent and voluntary character of the Red Cross and Red Crescent societies will be respected under all circumstances, provided that they will be recognised by their governments and carry out their work in harmony with the principles of the Geneva and Hague Conventions and the humanitarian spirit of the Red Cross and Red Crescent;

...that necessary steps will be taken to ensure that under all circumstances the contact between the national Red Cross and Red Crescent societies of all countries will be cultivated in order to enable that these societies carry out their humanitarian tasks." (Translated from an Austrian Red Cross translation)

The compliance with Red Cross principles was and is also one of the prerequisites for the recognition of the Austrian Red Cross through the International Committee of the Red Cross.

To § 2 Para. 1:

The task area of the Austrian Red Cross is stipulated. The text of the Red Cross Protection Law of 1962 was at the same time to be amended by the two Protocols of 1977. Furthermore, those tasks will be expressly mentioned, which ensue from the resolutions of the International Red Cross Conferences as well as the provisions of the Austrian Red Cross statutes in this connection.

To § 2 Para. 2 and 3:

Para. 2 contains the remark that as a voluntary aid society the Austrian Red Cross supports the authorities in the humanitarian field. The text corresponds to the international "Model Red Cross Law 1999", as it was resolved by the Republic of Austria at the 27th International Red Cross Conference. In the Model Red Cross Law 1999 it is also said: "1.2. The society is [...] auxiliary to the public authorities...." This concept of the auxiliary function of the Red Cross already has its origin with the founder of the Red Cross, Henry Dunant, and is even found in the resolution of the founding conference of the Red Cross Movement from 1863. The principle that the national societies support the armed forces medical corps as a neutral helper on the battlefield and are subordinate to these is codified in the Geneva Conventions. Since the 20th century the concept of auxiliary function is no longer exclusively related to the event of war, but also expanded to many other activities of the Red Cross and Red Crescent Movements. The study "National Red Cross and Red Crescent Societies as auxiliaries to the public authorities in the humanitarian field" was presented at the 28th International Red Cross Conference in December

2003. This study was adopted by the International Red Cross Conference and thus also by the Republic of Austria (Resolution 1 from 6 December 2003).

The supporting position of national societies vis-à-vis the authorities in the fulfilment of state tasks, which ensue from the Geneva Conventions of 1949, is presented in the study. Accordingly, national Red Cross and Red Crescent Societies have a special legal position as “auxiliary to the public authorities” (supporter of the authorities). Between state and national society there is a partnership which shall prevent and alleviate human suffering, protect life and health, safeguard respect for people and mutual understanding as well as promote friendship, trust and lasting peace amongst all peoples.

In order to more effectively take into consideration this interrelation between national society and state, it was recorded in Clause 2 of Para. 2 that the conditions for the support, delegation of tasks as well as the cost regulation in the agreements between national Red Cross society and the authorities are to be specified. These agreements can also be concluded only for a concrete case of application.

The concept of auxiliary function is also especially taken into consideration in Para. 2, where it is recorded that the authorities have to support the Austrian Red Cross in the fulfilment of its tasks mentioned in Para. 1 within the scope of its organisational and financial possibilities. This support can concern various measures in the organisational and financial realm, such as creation of suitable legal outline conditions, subsidisation or financing of services which will be rendered by the Red Cross on behalf of the authorities, always within the budgetary scope of the authorities. In this context, the term ‘authorities’ describes the administrative authorities, but not the courts.

To § 2 Para. 4:

Para. 4 includes an explicit reference to the tracing service of the Austrian Red Cross and its tasks. For instance, Resolution XVI of the International Red Cross Conference in 1986 not only standardises an obligation of national Red Cross and Red Crescent societies to cooperate with the exchange of news and in the search for missing persons, but requests the governments to support the endeavours of the national Red Cross and Red Crescent societies concerning tracing service and family reunifications.

At the request of persons who have lost contact with a close family member through a war, consequences of war, a conflict, a disaster, migration or flight, the Austrian Red Cross tracing service becomes active and then conducts enquiries pertaining to their whereabouts. As a result, information and data will then be exclusively obtained if an application or a request for information about a close family member is at hand.

Amongst other things, at least the obtainment of the following data and details of the sought-after person is usually necessary for the fulfilment of the tracing service tasks: family name, first name, former family name, place of birth and complete date of birth, name of father, name of mother, relationship, marital status, profession, nationality, last place of residence, current address; with relatives in the military: unit, rank, military postal number, burial site and details on the fate of the missing person.

The collection of information occurs through research in archives as well as in current databanks. Data which will not already be disclosed by the application (usually complete name, date of birth, place of birth, the last address, date and origin of the last message as well as the cause of the loss of contact) will be enquired about with federal, provincial or communal authorities, with archives and with other organisations.

The information and thus the data in this connection will be obtained and passed on solely with the aim to re-establish contact between the application and the missing person, to clarify the fate of the missing person or to confirm a military or civil activity or captivity during a conflict or a disaster.

If a sought-after person is found, their data will only be passed on with the express consent of the applicant.

§ 23 Postgesetz 1997, BGBl. I No. 18/1998 in the prevailing version, confirms the exemption from postal charges – already existing before the enactment of the Postgesetz 1997 – for the service for tracing missing persons of the Austrian Red Cross and its provincial associations as well as other exemptions from postal charges according to the provisions of the Geneva Conventions.

To § 3:

The position and the tasks of the Austrian Youth Red Cross, which is legally a part of the Austrian Red Cross, is governed here. The programmes of the Youth Red Cross result from the resolutions of the International Red Cross Conferences. The explicit recognition of the activity of the Youth Red Cross as well as the general obligation of the Austrian authorities resulting in accordance with § 2 Para. 3, and thus also all school authorities to support these activities as defined by the resolutions of the International Red Cross Conferences was specifically governed for the educational realm with the decree of the Federal Ministry for Education, Science and Culture (BMBWK), GZ 33.359/1-V/3/2001. Nothing in the previous position of the Austrian Youth Red Cross will be changed through this federal law.

To § 4:

This provision standardises the confidentiality obligation of Red Cross staff members. For instance, this plays an important role with regard to foreign deployments: In critical situations it is often possible for the Red Cross – frequently as the sole aid organisation – to maintain the dialogue with all those involved and also to speak

confidentially with victims or prisoners of war. That is why this is only possible since it is known that the Red Cross treats all information strictly confidential and always exercises its mandate neutrally and discreetly.

If the Red Cross staff would make confidential information accessible to the public, this trust of all those involved in their confidentiality would be quickly undermined and the work of the Red Cross would be massively hindered as a result. For this reason Red Cross staff shall be obligated to confidentiality concerning all facts which have become known to them in the exclusively in the fulfilment of the international Red Cross or Red Crescent Movement, the disclosure of which could endanger the work of the Red Cross or its entrusted representatives. Moreover, it is explicitly recorded that staff members are obligation to confidentiality concerning those facts which become known to them on account of a certain bond of trust. For instance, such a bond of trust could be the relationship between Red Cross physician and patient but also between delegates and prisoners of war.

The Austrian Red Cross has to point out this confidentiality to its staff in suitable form (e.g. employment contracts, confidentiality declarations, etc.).

Existing confidentiality provisions remain unaffected by this regulation, for instance the provisions in the *Ärztegesetz* [Medical Profession Act] BGBl. I No. 169/1998 in the prevailing version, *Sanitätergesetz* [Paramedics Act], BGBl. I No. 30/2002 in the prevailing version, *Gesundheits- und Krankenpflegegesetz* [Health & Nursing Act], BGBl. I No. 108/1997 in the prevailing version, *Psychotherapiegesetz* [Psychotherapy Act], BGBl. No. 361/1990 in the prevailing version, or in the *Datenschutzgesetz 2000* [Data Protection Act 2000], BGBl. I No. 165/1999 in the prevailing version.

To § 5 Para. 1:

The appearance of the Austrian Red Cross emblem is specified as it is described in Art. 38 of the 1st Geneva Convention. The Austrian Red Cross is bound during the utilisation of this emblem to the provisions of the Geneva Conventions and Additional Protocols as well as the conference resolutions. In § 5 it is authorised to permit other persons and institutions to utilise the emblem (see the explanations onto § 8 with regard to the terms “emblem”, “distinctive emblem” and “symbols”). In turn, institutions which are authorised by the Austrian Red Cross are the provincial associations and regional offices of the Austrian Red Cross as well as affiliates which perform Red Cross tasks. But for instance, a limited authorisation is also possible to companies or individuals within the scope of co-operations which the Austrian Red Cross enters into, for example to enhance the degree of familiarity, to draw attention to the special protection of the Red Cross emblem or to gain donations for its humanitarian activity.

The use of the Red Cross emblem thus always takes place in accordance with the respectively valid “implementing provisions for utilisation of the trademark of the Red Cross or Red Crescent through the national societies”, resolved by the 20th International Red Cross Conference (Vienna 1965), revised by the Delegates Council of the International Red Cross and Red Crescent Movement in Budapest in 1991.

To § 5 Para. 2:

The authority to bear the federal coat of arms dates back to the imperial resolution from 12 January 1880, with which the right to bear the imperial eagle on the seal has been granted. With the letter of 27 August 1984 from the Federal Ministry of the Interior to the Austrian Red Cross it is determined that the imperial resolution has legal character. The provision at hand is also authorised to make it clear that the Austrian Red Cross is also entitled to bear the federal coat of arms in the future.

To § 6:

At any rate, the utilisation of the distinctive emblem through the Austrian armed forces as well as through foreign armed forces on Austrian state territory – for instance, for designation of military medical personnel, vehicles or institutions – remains unaffected by this law.

With regard to the term “military authorities”, it is to be noted that the expression utilised in the German translation of the Geneva Conventions is not to be understood in terms of the official vernacular of the Austrian legal system. Such agencies which have no official character insofar as they are responsible for the management of military affairs can also come into question as “military authorities”.

To § 7:

The regional administrative authorities are the authorities responsible for the implementation of the provisions of Art. Para. 2 to 4, 20; Para. 2 and 3, 21 and 22; Para. 2 of the 4th Geneva Convention; and Art. 18 and 23 Para. 1 of Protocol I.

Pursuant to Art. 18 Para. 2 and 3, Art. 21 and Art. 22 Para. 2 of the 4th Geneva Convention, the civilian commodities protected by this convention are also to be provided with the Red Cross emblem. Pursuant to Art. 18 Para. 2 in connection with Art. 19 and Art. 20 Para. 1, the permission to use the Red Cross emblem may only be granted to civilian hospitals and those personnel which are exclusively specified for the care of wounded persons, the sick, weak and women in childbed; the Red cross emblem may only be put on vehicles which are exclusively specified for transport of the aforementioned persons (Art. 21 and Art. 22 Para. 1); the personnel

may only wear the armband with the Red Cross emblem in occupied areas and military operational zones, and only whilst they are on duty (Art. 20 Para. 2 and 3).

The medical and pastoral care personnel as well as the medical units and means of transport are to be rendered recognisable in accordance with Art. 18 of Protocol I. Medical units and means of transport will be provided with the distinctive emblem with the approval of the responsible agency in accordance with Para. 4. Art. 23 of Protocol I describes the designation of medical ships and other medical watercraft.

To § 8 Para. 1:

This paragraph includes those prohibition standards and sanctions which are required for ensuring the fulfilment of obligations from the Geneva Conventions and Additional Protocols with regard to the protection of the emblem in the internal territory.

To § 8 Para. 1 lit. a:

The utilisation of the Red Cross emblem is governed in Art. 44 and 53 of the 1st Geneva Convention.

With regard to the utilisation of the symbol of the Red Cross (Red Cross emblem), which encompasses the utilisation as a distinctive emblem as well as a symbol, the following is to be generally noted:

As a distinctive emblem

The Red Cross emblem may only be utilised in accordance with the Geneva Conventions and Additional Protocols, and only in the following cases:

A. In peace, in war or in the event of an armed conflict, to designate persons and things which are protected through the 1st and 2nd Geneva Conventions as well as through Protocols I and II.

This particularly includes:

I. The following persons:

1. Members of the Austrian armed forces medical corps:

a) Persons who will be exclusively utilised for searching, rescue, transport or for care of wounded or sick people or for prevention of diseases.

For example:

aa) Physicians

bb) Pharmacists

cc) Members of professional medical services

dd) Members of auxiliary medical services

ee) Medical motor vehicle drivers

b) Persons who will be exclusively utilised for the administration of Austrian armed forces medical institutions and medical formations.

2. Members of the Austrian armed forces which have been specially trained in order to be utilised as auxiliary nurses or auxiliary orderlies, for the duration of the utilisation as auxiliary nurses or auxiliary orderlies.

3. Members of the Austrian armed forces which will be exclusively utilised for the administration of medical institutions and medical formations, even if they do not belong to the medical corps.

4. Chaplains

5. Members of the Austrian Red Cross or another recognised voluntary aid society as defined by Art. 26 of the 1st Geneva Convention, if they will be utilised in terms of the medical corps and come under the authority of military laws.

II. The following things:

1. Austrian armed forces medical corps facilities, means of transport and material:

a) Stationary and mobile medical corps facilities:

aa) Medical institutions (buildings or other stationary facilities, such as hospitals of any kind and lazarettos which are exclusively specified for rescue and care of wounded and sick persons)

bb) Medical formations (mobile medical corps facilities, such as field lazarettos, ambulances, accident scenes and other outdoor facilities which exclusively serve purposes for rescue and care of wounded and sick persons).

b) Means of transport:

aa) Medical vehicles (vehicles of any kind which serve the transport of wounded and sick persons, medical personnel and medical material)

bb) Medical aircraft (which serve the transport of wounded and sick persons as well as medical personnel and medical material)

c) Medical material (material utilised in the medical corps, such as lazaretto fixtures, medical instruments, medicaments, dressing material, stretchers).

2. Facilities, means of transport and material of the kind described in Item 1 lit. a, b and c, insofar as these things serve the Austrian Red Cross or another recognised voluntary aid society as defined by Art. 26 of the 1st Geneva Convention for fulfilment of medical service within the scope of the Austrian armed forces.

(Art. 19-21, 24-26 and 38-44 of the 1st Geneva Convention as well as Art. 22, 24, 25, 27, 43 and 44 of the 2nd Geneva Convention.)

B. In war or in the event of another armed conflict with official consent, to designate persons and things which are entitled to bear the Red Cross emblem as a distinctive emblem through the 4th Geneva Convention.

This particularly includes:

1. In the military operational zones and in the occupied areas; physicians, pharmacists, members of professional medical services, medical-technical services and auxiliary medical services as well as medical orderlies and members of the administrative personnel who are exclusively active in civilian hospitals, insofar as they perform an appropriate activity under point A I item 1 for the duration of their service; those not exclusively involved in such institutions during the performance of medical service.

2. Hospitals pursuant to § 1 of the Federal Hospital and Convalescent Home Act (KAKuG) from 18 September 1956, BGBl. No. 1/1957 in the respectively prevailing version, if they have been recognised as defined by the provisions of Art. 18 of the 4th Geneva Convention as civilian hospitals.

3. For the transport of wounded and sick civilians; means of transport utilised by invalids and women in childbed (Art. 18, 20, 21 and 22 of the 4th Geneva Convention).

C. In war or in the event of another armed conflict, in order to designate the medical zones and sites for wounded and sick persons provided for in the 1st and 4th Geneva Conventions (Art. 23 of the 1st Geneva Convention and Art. 14 of the 4th Geneva Convention).

As a symbol

The Red Cross emblem may be utilised in accordance with the Geneva Conventions in peace as well as in wars by the Austrian Red Cross as well as by institutions authorised in accordance with § 5 Para. 1 which comply with the principles of the International Red Cross Conferences and the Austrian laws (Art. 44 Para. 2 of the 1st Geneva Convention).

Difference between distinctive emblem and symbol:

Through the distinctive emblem it will be pointed out to the adversary that the persons or things designated with these emblems enjoy the special protection of the Geneva Conventions. However, the symbol does not guarantee any protection according to the Geneva Conventions.

The distinctive emblem shall be large and conspicuous. In times of peace, the symbol can be arranged in any optional size; however, in times of war it has to be smaller than the distinctive emblem and may neither be put on armbands nor on roofs.

The International Red Cross organisations and their duly identified personnel are authorised at all times to utilise the emblem of the Red Cross on a white background.

To § 8 Para. 1 lit. b:

As already mentioned in the Red Cross Protection Law of 1962, here it is stated that the utilisation of the emblem of the Red Crescent on a red background [sic] as well as the Red Lion with a red sun on a white background as well as the words "Red Crescent" and "Red Lion with Red Sun" is also prohibited. These emblems and words enjoy the same protection according to the Geneva Conventions as the emblem of the Red Cross as well as the words "Red Cross".

To § 8 Para. 1 lit. c

§ 8 Para. 1 lit. c protects the "Red Crystal on a white background", which was created with Protocol III. In turn, the utilisation of the emblem "Red Crystal on a white background" as well as the words "Red Crystal" is prohibited. The emblem of the Red Crystal enjoys the same protection under international law as the emblem of the Red Cross, the Red Crescent or the Red Lion with Red Sun and is equivalent to these.

To § 8 Para. 1 lit. d:

§ 8 prohibits not only the utilisation of the emblems of the Red Cross, Red Crescent, Red Lion with Red Sun and Red Crystal on a white background, but also any imitation of these emblems. This prohibition of imitation ensues from Art. 53 of the 1st Geneva Convention. The commentary on Art. 53 of the 1st Geneva Convention by the International Committee of the Red Cross notes the following:

"D. Imitations of emblem

A welcome innovation of the year 1929 was the prohibition of not only the utilisation of the emblem without authorisation, but also any emblem or name which concerns an imitation of the emblem and name of the Red Cross. This important provision was adopted as a matter of course in 1949.

Commercial enterprises, which could no longer utilise the emblem after 1906 without risking prosecution, came up with emblems – this with an inventive talent which would have been worthwhile to better employ elsewhere – of which one could not say that they were Red Cross emblems, but which gave the impression that they were. This enabled them to advertise for their products with impunity, at least with the prestige inherent in the emblem. The following were put forward as examples: a Red Cross with a figure or another cross over it; a cross that has only red contours or red components; backgrounds in various colours; a cross half-white, half-red on a background in which the two colours are arranged in an inverted manner; a red star that looks like a red cross from afar. Such practices, detrimental to the emblem and the organisation, had to be prevented.

It is the obligation of the authorities of every country to decide whether an emblem represents an imitation. [FN 2: It is clear that any red cross, no matter with any form or any background whatsoever, represents an imitation and should be prohibited.] This decision can sometimes be difficult. The criterion shall be the danger of confusion between the utilised emblem and the Red Cross emblem amongst the general public, since particularly this confusion shall be prevented by the regulation.

In order to assess the user's responsibility it must be attempted to determine whether the user actually had an intention to deceive the general public or to exploit the emblem's prestige. In such a case the text shall be interpreted as much as possible in favour of the Convention and the Red Cross. Why should someone who has no bad intention select an emblem that resembles that of the Red Cross? There cannot be any valid objections against the replacement through a completely different emblem."

(Extract from the 1st Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; commentary, International Committee of the Red Cross, Geneva 1995, page 385 contd.; Austrian Red Cross translation)

To § 8 Para. 1 lit. e:

Amongst other things, the following come under the term 'other emblems' as defined by § 8 Para. 1 lit. e:

- Parliamentary flags as well as the emblem of the United Nations pursuant to Art. 30 of Protocol I
- Recognition signals pursuant to Annexe I Section III of Protocol I
- Signals and codes pursuant to Annexe I Section IV of Protocol I
- The emblem of civil defence pursuant to Art. 66 of Protocol I and pursuant to Annexe I Section V of Protocol I:

The international distinctive emblem of civil defence serves the protection of civil defence organisations, their personnel, their buildings and their material or for protection of civilian protective structures. The civil defence emblem consists of an equilateral blue triangle on an orange-coloured background. Annexe I Section V of Protocol I includes regulations concerning the utilisation of civil defence emblems.

- Symbol for plants and facilities which contain hazardous powers pursuant to Annexe I Section VI of Protocol I, as well as
- Distinctive emblem for any possible agreed medical and safety zones pursuant to Art. 6 of Annexe I of the 4th Geneva Convention

The legislators have created a prohibition standard in § 37 Para. 3 Item 8 of the federal law concerning the protection of monuments on account of their historic, artistic or other cultural importance (Monument Preservation Act – DMSG), BGBl. No. 533/1923 as amended by BGBl. I No. 170/1999 for the improper utilisation of – also in Art. 38 of Protocol I – recognised distinctive emblems for cultural property.

To § 8 Para. 2:

§ 8 Para. 2 adopts the prohibition of the utilisation of the coat of arms of the Swiss Confederation from the Red Cross Protection Law of 1962, whereby the wording has been modernised and adapted to the existing legal terminology. From the text of Art. 53 of the 1st Geneva Convention it ensues that each of the three types of utilisation enumerated here is prohibited on its own, and the enumeration is not to be understood as cumulative (compare Art. 53, 2nd Clause of the 1st Geneva Convention: "[...] be it as a manufacturer's mark or trademark or as a component of such brands, it is at all times forbidden for a purpose contrary to commercial respectability or under conditions which are suited to violate the Swiss national consciousness.>").

To § 8 Para. 3:

Pursuant to § 8 Para. 3, the words and emblems specified under Para. 1 may only be registered as a brand with the approval of the Austrian Red Cross. This also applies if these words or emblems shall merely be a component of a brand.

According to the previous Red Cross Protection law, the utilisation of the Red Cross emblem was forbidden, but the registration as a brand was not expressly prohibited. As a result, it was thus possible to register the Red Cross emblem or imitations thereof, insofar as it would not be subsequently utilised. Upon registration of a brand with

the Patent Office it will be primarily examined whether a similarity exists with already existing brands or whether the brand is sufficiently distinctive. But there is no passage in the Trademark Protection Law [MSchG] 1970, BGBl. No. 260/1970 in the prevailing version, from which it ensues that in the course of trademark registration it is to be examined by the Patent Office whether the brand violates simple federal laws such as the Red Cross Protection Law.

The previously available possibility to register emblems despite contradiction with the Red Cross Protection Law has above all frequently led to problems in practice. In the course of administrative criminal proceedings according to the Red Cross Protection Law, it was often asserted by defendants that the utilisation of the emblem must be lawful, since it has been indeed also been accepted as a brand by the Patent Office.

The requirement of Austrian Red Cross approval for registration has now been introduced in order to create an appropriate control mechanism here. In the future, this control function will also play a particularly important role with regard to attempted registration of imitations, since especially with brands which do not concern an exact figure of one of the emblems, but imitations as defined by § 8 Para. 1 lit. d, different legal opinions could emerge concerning the capability of being registered. For assessment whether an imitation could engender confusion or mistakes or could unjustifiably refer to a connection with the Austrian Red Cross, the responsible authority will usually consult the Austrian Red Cross in a practical manner. The Austrian Red Cross is thoroughly suitable for the assessment of the capability of brands being registered in this connection, since it not only looks back on decades of experience in dealing with trademark protection violations and with the clarification of cases of doubt, but also because the Austrian Red Cross has access to all current international developments in this field, and therefore, particularly in cases of doubt, can make an assessment in harmony with these developments.

Brands which contradict Para. 1 and are already registered, are to be cancelled upon request. This will especially concern brands which contradict Para. 1 and have already been registered before entry into force of this federal law. Excepted from this is partially the emblem of Protocol III, see § 8 Para. lit. c ("Red Crystal"), which is then not cancelled if it has already been lawfully utilised before entry into force of this federal law. This exception has been incorporated for reasons of legal certainty in order to avoid cancellation procedures with regard to an emblem whose utilisation was not prohibited in Austria up until entry into force of this federal law. However, the utilisation of "Red Crystal" as well as imitations thereof nevertheless remain punishable after entry into force of this federal law according to § 8 Para. 1.

With regard to Red Cross, Red Crescent and Red Lion with Red Sun, an exception in the event of formerly lawful utilisation is no longer necessary, particularly since the utilisation of these emblems has already been prohibited in Austria since 1962.

To § 9 Para. 1 and 2:

The infringement of the provisions of § 8 constitutes an administrative violation. The improper utilisation of the Red Cross emblem or another protected emblem – improper utilisation means against the provisions of the Geneva Conventions, particularly Art. 44 and 53 of the 1st Geneva Convention – for instance through business enterprises which advertise a well-known emblem and would thereby like to enhance their reputation ("image transfer" or utilise this as an "eye catcher" for advertisements or TV spots or through private individuals is to be evaluated differently, however, and leads to differentiation in the range of punishment between simple utilisation and utilisation on a large scale. The range of punishment for Para. 1 would be largely ineffective, particularly with larger enterprises which spend sums of several hundred thousand Euros for corresponding advertising campaigns.

The criterion of Para. 2, "becomes known to a broad public", would be typically fulfilled with

- a poster campaign,
- a television or cinema spot,
- a utilisation in the Internet,
- a mass dissemination, for instance in paper form or per e-mail,
- a publication,
- an advertisement in a periodical publication,
- a utilisation on packaging or directly on a commodity

and similar campaigns in which the damage caused to the prestige of the emblem in the general public is much greater than with simple utilisation.

To § 9 Para. 3:

Para. 1 obligates the authorities to bring about the removal of an improperly utilised Red Cross emblem or other protected emblem, and creates the possibility for forfeiture of objects designated as unlawful. The necessity of such a provision ensues from the practical experience in administrative criminal proceedings on account of improper utilisation of the distinctive emblem. Administrative penalties will be frequently paid, but at the same time the penalised persons or firms persist in the unlawful utilisation of the Red Cross emblem. This goes so far

that the objects designated as unlawful are still available on the market after conclusion of the administrative procedure (e.g. T-shirts). The thoughts of protection of the Red Cross emblem can only be effectively taken into consideration through a rapid removal and subsequent forfeiture of the objects designated as unlawful.

To § 9 Para. 4:

§ 9 Para. 4 is contextually replicated with regard to the publication of the decision pursuant to the Media Act, BGBl. No. 314/1981 in the prevailing version. A publication of penal decisions on account of distinctive emblem violation leads to raising awareness in the public concerning the protection of the Red Cross emblem, and thus contributes towards minimisation of the number of improper utilisations and the administrative expenditure associated with prosecution. The incurred image damage for the emblem can at least also be partially redressed as a result.

To § 9 Para. 5:

Since the improper utilisation of the Red Cross emblem in times of peace for commercial purposes not only undermines its importance as a symbol and distinctive emblem of the medical corps in times of war, but also the Austrian Red Cross itself as the legally recognised national Red Cross Society, the Austrian Red Cross has a legal interest in the administrative procedure.

The frequent improper utilisations and the often difficult situation in this partial international field of law make the perception of legal standing indispensable in the administrative procedure. The legal standing of the Austrian Red Cross shall facilitate the work of the regional administrative authorities in this complex legal realm and substantially contributes towards standardisation of the often divergent legal opinions in this realm. On the one hand, the legal certainty shall be improved in this field, and on the other hand, the effective protection of the emblem shall be ensured as a result.

To § 9 Para. 6:

Individuals who are subject to the Austrian military disciplinary law and abuse the name and emblem of the Red Cross shall not be punished on account of an unlawful administrative act, but on account of a breach of an administrative regulation or a duty offence commensurate with the provisions of the Federal Armed Forces Disciplinary Act (HDG), BGBl. I No. 167/2002 in the prevailing version.

This different regulation between the individuals who are subject to Austrian military disciplinary law – these are usually soldiers – and other individuals mainly has its reason in the fact that it would not be useful to provide for a penal provision for the soldiers, which then does not seem feasible if a special topicality is in store for them. The inducement, namely to abuse the emblem or the name of the Red Cross, may offer itself for soldiers mainly in times of war. But especially in this case, a punishment of soldiers on account of an administrative violation by way of civilian authorities would hardly be possible in many cases. On the other hand, the Austrian military disciplinary law, which is particularly coordinated with military conditions, offers the possibility to appropriately punish soldiers at any time.

It would be conceivable that members of the Austrian Red Cross would be deployed for support of the Austrian armed forces medical corps in the event of war or in a special case of conflict. But since these individuals would only be in store for the protection provided for medical personnel in the Geneva Conventions insofar as they provide their medical service in subordination under the command of military laws, such a subordination would already be undertaken solely for this purpose in such a case. In order to also incorporate these individuals in the scope of application of Para. 6, the provision according to Para. 6 has not only been geared to soldiers, but to all individuals who come under the authority of the Austrian military disciplinary law.

To § 10:

The implementation of tracing service through the Austrian Red Cross concerns a task stipulated by international law, which ensues from the Geneva Conventions. The services of the tracing service are for those affected individuals who make use of these services, free of charge, but are associated with a substantial administrative expenditure for the Austrian Red Cross. This circumstance has already been partially taken into consideration with the exemption of the tracing service from the postal charges through § 23 Postgesetz. The exemption from all other fees and federal administrative charges supports the Austrian Red Cross even further in this connection so that it can effectively help affected individuals through its tracing service.

The Austrian Red Cross exemption from fees pursuant to § 2 Item 3 Law on Fees [GebG], BGBl. No. 267/1957 in the prevailing version remains unaffected.

To § 11:

§ 11 specifies the effective date of the law, with which the federal law from 27 June 1962 on the Protection of the Emblem and the Name of the Red Cross (Red Cross Protection Law), BGBl. No. 196/1962, becomes inoperative.

To § 12:

§ 12 contains the enforcement clause which takes into consideration the jurisdictional situation.